General Motors Corporation, Delco Moraine Division *and* Local 696, United Automobile, Aerospace and Agricultural Implement Workers of America. Case 9-CA-14933

August 28, 1981

DECISION AND ORDER

BY MEMBERS FANNING, JENKINS, AND ZIMMERMAN

On November 26, 1980, Administrative Law Judge Stanley N. Ohlbaum issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions and a supporting brief, and the General Counsel filed a brief in response.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings,[1] findings, and conclusions[2] of the Administrative Law Judge and to adopt his recommended Order.[3]

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge and hereby orders that the Respondent, General Motors Corporation, Delco Moraine Division, Dayton, Ohio, its officers, agents, successors, and assigns, shall take the action set forth in said recommended Order.

[1] Respondent argues that the Administrative Law Judge erred in refusing to quash the *subpoena duces tecum* obtained by the Charging Party ordering production of the timestudy worksheets sought herein, and in refusing to receive evidence concerning the general history of the parties' arbitration of contractual issues. Respondent further argues that these rulings indicate bias on the part of the Administrative Law Judge which warrants reversal of his Decision.

After a careful examination of the entire record, we are satisfied that Respondent's allegation of bias is without merit. We thus affirm the Administrative Law Judge's finding that the parties' arbitration of issues unrelated to the present case is immaterial to the issues involved herein. See fn. 2, *infra*. However, we find it unnecessary to rely on or review the Administrative Law Judge's refusal to quash the Charging Party's *subpoena duces tecum*, or his finding that it would be appropriate in this case to draw an adverse inference from Respondent's failure to comply with the subpena, since the record fully establishes the relevance of the timestudies and related materials to the Charging Party's processing of grievances concerning production standards. We thus also find no need to review the Administrative Law Judge's comments concerning the appropriateness, or availability, of a protective order to cover the timestudy worksheets had they been produced. In addition, in finding that Respondent violated Sec. 8(a)(5) by refusing to furnish the Charging Party with timestudy sheets in its possession, we do not rely on the Administrative Law Judge's comments on testimony by Respondent concerning its unwillingness to allow the Charging Party to conduct its own independent in-plant timestudies.

[2] We agree with the Administrative Law Judge's conclusion that the question of the Charging Party's right to original timestudy worksheets on which Respondent bases its production standards has not been determined by prior arbitration decisions, and that it is not an appropriate matter for deferral to arbitration under the parties' contractual arbitration clause. First, it is well established that the Board will not defer to arbitration pursuant to *Collyer Insulated Wire, A Gulf and Western Systems Co.*, 192 NLRB 837 (1971), a party's request for bargaining information to which it is statutorily entitled. *International Harvester Company*, 241 NLRB 600 (1979). In addition, the record herein indicates that the parties have not chosen to arbitrate the present dispute. Second, Respondent has presented no evidence that the issue of the statutory right of the Charging Party to the timestudy worksheets sought here was either presented to or considered by the arbitrators who, in 1947 and 1949, issued decisions which dealt with rights to information concerning production standards. We thus also find no merit to Respondent's argument that the Board should defer to these decisions pursuant to *Spielberg Manufacturing Company*, 112 NLRB 1080 (1955). Furthermore Respondent has presented no evidence that the Charging Party acquiesced in Respondent's interpretation of these decisions as denying its right to timestudy worksheets, or otherwise demonstrated a clear and unmistakable waiver by the Charging Party of its right to these data. Rather, the record before us indicates that the Charging Party has for more than 20 years consistently sought to bargain with Respondent during contract negotiations to expand its contractual rights to information on which production standards are based. See *The Timken Roller Bearing Co.* v. *N.L.R.B.*, 325 F.2d 746 (6th Cir. 1963). We thus find without any foundation Respondent's argument that the Charging Party was obligated to overturn the 1947 and 1949 arbitrators' decisions through an arbitral forum in order to reassert its statutory rights as well as Respondent's related argument noted above that the Administrative Law Judge demonstrated bias by his refusal to admit certain evidence alleged to support this contention. In view of these conclusions, we find it unnecessary to review or rely on the Administrative Law Judge's discussion concerning the validity of a hypothetical waiver by the Charging Party of its statutory right to the timestudy worksheets.

DECISION

STATEMENT OF THE CASE

STANLEY, N. OHLBAUM, Administrative Law Judge: This proceeding[1] under the National Labor Relations Act, as amended (29 U.S.C. § 151, *et seq.*), was heard before me in Dayton, Ohio, on September 29-30, 1980, with all parties participating throughout by counsel, who

[3] We adopt the Administrative Law Judge's recommended Order that Respondent furnish or make available to the Charging Party timestudies and related materials, as limited by the parties' stipulation that no remedy was sought regarding the furnishing of blueprints, elemental breakdowns, and information known to the parties as "Twenty Questions." *The Timken Roller Bearing Company*, 138 NLRB 15 (1962), enfd. 325 F.2d 746 (6th Cir. 1963), cert. denied 376 U.S. 971 (1964). Cf. *N.L.R.B.* v. *Allied Products Corporation, Richard Brothers Division*, 548 F.2d 644 (6th Cir. 1977).

were afforded full opportunity to present evidence and arguments, as well as to file post-trial briefs received on October 29 and 30, 1980.

The basic issue presented is whether Respondent Employer has violated Section 8(a)(5) and (1) of the Act through its conceded refusal to provide to the Charging Party Union information (Employer's timestudy data allegedly supporting Employer's revised production standards) which the Union asserts is required for its representation of a bargaining unit of Respondent's employees.

Upon the entire record and my observations of the testimonial demeanor of the witnesses, I make the following:

FINDINGS AND CONCLUSIONS

I. JURISDICTION

At all material times Respondent has been and is a Delaware corporation, with an office and place of business in Dayton, Ohio, engaged in manufacture and nonretail sale and distribution of automobile and related products. In the representative 12-month period immediately antedating issuance of the complaint herein, in the course and conduct of its said business operations Respondent sold and shipped from its said Dayton facility, directly in interstate commerce to places outside of Ohio, goods and materials valued in excess of $50,000.

I find that at all material times Respondent has been and is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act; and that at all of those times Charging Party Union has been and is a labor organization as defined in Section 2(5) of the Act.

II. THE ALLEGED UNFAIR LABOR PRACTICES

A. *Facts as Found*

For the past 30 years, Respondent and the Union have been parties to successive collective labor agreements covering a bargaining unit of approximately 4,000 production, maintenance, and mechanical employees in Respondent's two Dayton, Ohio, plants. The current collective agreement, from October 1, 1979, through September 14, 1982, includes provisions concerning establishment of production standards (Jt. Exh. 1, pars. 78–79) and regarding grievance procedures generally (*id.*, pars. 28–55).[2]

In July 1979 and March 1980 Respondent, allegedly on the basis of in-plant timestudies conducted by it, respectively established 8-hour shift production standards of 8,960 units for its Department 531 X-car Acme job and 5,997 units for its Department 529 Gilman line. It is undisputed that Respondent has at all times refused and continues to refuse to comply with the Union's repeated requests for access to the alleged timestudy observations, facts, and data underlying its imposition of these revised production "standards."[3] Indeed, Respondent refused even to produce them at this hearing pursuant to a *subpoena duces tecum* which I declined to quash.[4]

Respondent's conceded continuing refusal to permit the Union to have access to Respondent's alleged timestudies, upon which are based its aforementioned revised

[2] Par. 78, dealing with production standards, requires that they be "established on the basis of fairness and equity consistent with the quality of workmanship, efficiency of operations, and the reasonable working capacities of normal operators," as determined locally in each plant; "speed . . . assembly lines will not be increased beyond the level for which they are manned for the purpose of gaining additional production or *for the purpose of making up for loss of production* due to breakdowns or unscheduled line gaps or stops" (par. 78a; "Work assignments on conveyor lines *will be made in accordance with line speeds and available work space* and the *expected normal* ratio of model mix and *optional* equipment. When it is *necessary* to adjust the *normal scheduled mix* on conveyor lines *which results in more or less work being required, compensation adjustments* in *work assignment, manpower, spacing of units, line speed or any combination thereof will* be made" (par. 78b; emphasis supplied); after establishment of "normal" time and other requirements, in case of engineering or other revisions, "only the time or the requirements of the elements affected by such change will be adjusted" (par. 78c); and if a "production standard" is "to be established" on a new off-line or machine operation already in production, "the operator will be advised of the reason for not establishing the standard and the expected requirements of the operation" (par. 78d).

Par. 79 deals with the processing of "dispute[s] regarding standards established or changed by the Management." These are initially to "be taken up with the foreman," and, if "not settled," may be carried up to successively higher echelons. It is expressly stipulated that, if the dispute is not "settled" and the employee files a grievance, "*The foreman or the time study man will furnish him with all of the facts of the case.* . . . [including] the work elements of the job without undue delay [and] when available, the cycle time or other pertinent data that is relevant to the dispute will be provided" (par. 79; emphasis supplied). If the dispute is not thereafter "settled," it may be carried upward through successive grievance steps (pars. 79 a–i), and, finally, if not "settled," *a strike called.*

For the most part, on a large number of occasions antedating the instant case, disputes concerning revised production standards have been settled informally between the parties, but strikes have occurred in some instances.

[3] Although Respondent on at least some previous occasions supplied the Union with what it calls "time study elemental breakdowns," it failed to supply even those with regard to the above-described production standards newly imposed in July 1979 and March 1980. In any event, the instant litigation is not directly concerned with these failures (cf. Stipulation, Jt. Exh. 3) and it is clear from the "elemental breakdown" itself (e.g., G.C. Exh. 5a) as well as from the testimony of Respondent's own witnesses that it is not the same as the timestudies, being merely Respondent's alleged summarizations or conclusions—allegedly warranted, in Respondent's *ipse dixit* opinion—drawn or extrapolated by it from the data allegedly contained in the time studies. It is also clear that such alleged "summarizations" or "conclusions" could be misleading and even erroneous, on the inference as well as mechanical level; that the "elemental breakdowns" can at best be no more accurate than the timestudy data from which they allegedly derive; and that error in the timestudy data will carry forward and infect the correctness of the "summarizations" or "conclusions" in the "elemental breakdowns." It is, in other words, clear that the "elemental breakdowns"—even though not furnished here by the Employer to the Union—are in any event not the same as, nor a fair substitute for, the timestudy alleged observations and data themselves, which, if not made available to the Union, are thereby in effect immunized from question, correction, discussion, or meaningful negotiation.

[4] The question of a protective order, pending ultimate resolution of the instant proceeding, was not reached. Respondent's refusal to produce its alleged timestudies here lends strong support, if needed, to the concession in its own witnesses' testimony that they are not the same as its "elemental breakdowns"; and, beyond that, it seems to me, to the inference that had they been produced they would have supported the contention of the General Counsel and the Charging Party that they contained alleged observations or alleged reported "facts" open to serious question and argument, if not outright demonstration of inaccuracy or *prima facie* error, and thus clearly essential to the proper carrying out of the Union's representational obligations to its members in that good-faith collective-bargaining process mandated by the Act. Cf. *U.S.* v. *Denver & R.G.R. Co.*, 191 U.S. 84, 91–92 (1903); *International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW)* [*Gyrodyne Co. of America*] v. *N.L.R.B.*, 459 F.2d 1329 (D.C. Cir. 1972); *N.L.R.B.* v. *Wallick, etc.*, 198 F.2d 477, 483 (3d Cir. 1952); and see sec. II,B,1, *infra.*

or newly imposed production standards requirements for the bargaining unit employees, raises the basic issue for determination here. This will be considered in terms of the defenses which Respondent raises to justify its refusal.

B. *Respondent's Defenses*

1. First Defense: The Union is not entitled to the information it seeks

Respondent insists that the Union is not entitled to see Respondent's timestudies. In this regard I believe Respondent is clearly in error. In *Westinghouse Electric Corporation*, 239 NLRB 106 at 107 (1978), the Board restated the basic standard for determining the relevance of information sought by a bargaining agent:

> It is well established that a labor organization, obligated to represent employees in a bargaining unit with respect to their terms and conditions of employment, is entitled to such information from the employer as may be relevant and reasonably necessary to the proper execution of that obligation. The right to such information exists not only for the purpose of negotiating a contract, but also for the purpose of administering a collective-bargaining agreement. The employer's obligation, in either instance is predicated upon the need of the union for such information in order to provide intelligent representation of the employees. The test of the union's need for such information is simply a showing of "probability that the desired information was relevant, and that it would be of use to the union in carrying out its statutory duties and responsibilities." The union need not demonstrate that the information sought is certainly relevant or clearly dispositive of the basic negotiating or arbitration issues between the parties. The fact that the information is of probable or potential relevance is sufficient to give rise to an obligation on the part of an employer to provide it. The appropriate standard in determining the potential relevance of information sought in aid of the bargaining agent's responsibility is a liberal discovery-type standard.

Long prior to *Westinghouse*, in *N.L.R.B.* v. *Acme Industrial Co.*, 385 U.S. 432, 435–436 (1967), citing an even earlier case, *N.L.R.B.* v. *Truitt Manufacturing Co.*, 351 U.S. 149 (1956), the Supreme Court had clearly announced that:

> There can be no question of the general obligation of an employer to provide information that is needed by the bargaining representative for the proper performance of its duties.

Specifically with regard to timestudy worksheets, the bargaining representative's right of access thereto has been upheld. *The Timken Roller Bearing Company* v. *N.L.R.B.*, 325 F. 2d 746 (6th Cir. 1963), cert. denied 376 U.S. 971 (1964), wherein the court again reminded (325 F.2d at 750) that:

> . . . This right to relevant wage information and data is not limited to the period during which the employer and the union are engaged in negotiations for a collective-bargaining agreement, but includes the processing of a grievance under the bargaining agreement and the union's bona fide actions in administering the bargaining agreement during the period of its existence.[5]

The information requested by the union and refused by the employer in *Timken* consisted of (138 NLRB 15 at 20–21):

(1) The original timestudy sheets and other documents relative to both the prior rates and the new rates.

(2) All other data, studies (including timestudy sheets), and other information used to determine the rate of pay for each such job.

(3) All documents, studies, and other information which is used to evaluate such jobs, both prior to the change and thereafter which are used to evaluate such jobs and also in assigning incentive rates thereto, including full information as to the weights given to each factor used to arrive at a final decision on the established rates and what factors are considered in making such decision.

(4) Timestudy manuals, instructions, and procedures used in the making of timestudies of jobs in your plants, including full information as to the weights given to each factor used to arrive at a final decision on the established rate and what factors are considered in making such decisions.

(5) Manuals, instructions, and procedures used in development of "standard data" and the application thereof in the development of job rates in your plants . . . generally as to your procedures and practices and . . . not limited to . . . specific grievances and situations.

(6) All basic data relating to the establishment and development of incentive standards and wage rates . . . timestudy sheets, summary sheets, information relative to the use of standard data, information relative to time and delay allowances and the factors used in such allowances, the breakdown of elements on each such job, leveling factors and allowances and ratings, and all other information and data (including original documents) showing how such rates and standards were developed and amended, and the manuals and instructions and procedures used in the establishment of the incentive rates.

In view of the fact that access by the Union to the requested data is not only relevant but central to proper performance of its obligation to its members, it is diffi-

[5] Cf. *Safeway Stores, Inc.*, 236 NLRB 1126 (1978), enfd. 622 F.2d 425 (9th Cir. 1980); *W. A. Sheaffer Pen Company, a Division of Textron, Inc.*, 214 NLRB 15 (1974); *North Carolina Finishing Division of Fieldcrest Mills, Inc.*, 182 NLRB 764 (1970); *Anaconda Wire and Cable Company*, 182 NLRB 272 (1970), enfd. as modified 444 F.2d 1028 (7th Cir. 1971); *General Electric Company*, 173 NLRB 164 (1968), enfd. 414 F.2d 918 (4th Cir. 1969); *P. B. Mallory & Co., Inc.*, 171 NLRB 457 (1968), enfd. 411 F.2d 948 (7th Cir. 1969); *Johns-Manville Products Corporation*, 171 NLRB 451 (1968); *Texaco, Inc.*, 170 NLRB 142 (1968), enfd. 407 F.2d 754 (7th Cir. 1969); *Univis, Inc.*, 169 NLRB 37 (1968); *Skyland Hosiery Mills, Inc.*, 108 NLRB 1600 (1954); *Otis Elevator Company*, 102 NLRB 770 (1953), enfd. in this regard 208 F.2d 176 (2d Cir. 1953); *Hughs Tool Company*, 100 NLRB 208 (1952).

cult to apprehend any justification for Respondent's obdurate continuing refusal to permit access thereto as irrelevant or as something to which the Union is not entitled.[6] Applying the oft-repeated principles and standards established in the cited cases, from the Supreme Court on down, it is clear and accordingly determined that the data here requested are relevant, material, and necessary to proper performance of the Union's bargaining and representational obligation, that the Union is entitled thereto, and that Respondent should be required to make the data available to the Union.[7]

2. Second defense: The Union has waived any right it may have to the information it seeks

Respondent contends that, even if the Union has a right to the information in question, it has waived that right.

It is an established principle that a waiver, or voluntary relinquishment, or a right must be "clear and unmistakable." *Tide Water Associated Oil Company*, 85 NLRB 1096, 1098 (1949); *N.L.R.B.* v. *The Item Company*, 220 F.2d 956, 958-959 (5th Cir. 1955), cert. denied 350 U.S. 836 rehearing denied 350 U.S. 905. Neither silence in the bargaining agreement (*Timken Roller Bearing Company* v. *N.L.R.B., supra; N.L.R.B.* v. *J. H. Allison & Company*, 165 F.2d 766, 768 (6th Cir. 1948), cert. denied 335 U.S. 814; *Sun Oil Company of Pennsylvania, Inc.*, 232 NLRB 7 (1977)) nor a contractual "wrap-up" or "zipper" provision (*General Electric Co.* v. *N.L.R.B., supra; Magma Copper Company*, 208 NLRB 29 (1974); *The Sawbrook Steel Castings Company*, 173 NLRB 381 (1968)) meets that test. Waiver "is not to be readily inferred and it should be established by proof that the subject matter was consciously explored and that a party has 'clearly and unmistakably waived its interest in the matter' and has 'consciously yielded' its rights." *Tucker Steel Corporation and Steel Supply Company*, 134 NLRB 323, 332 (1961), and cases cited; accord: *C & C Plywood Corporation*, 148 NLRB 414, 416-417 (1964), enforcement denied 351 F.2d 224 (9th Cir. 1965), reversed 385 U.S. 421 (1967).

Nowhere in the collective agreement is any waiver by the Union, such as is here suggested by Respondent, to be found. The parties' bargaining history demonstrates that the issue of the Union's right to Respondent's time-study data has been an unresolved, continuing bone of contention, with no relinquishment but rather consistent pursuit of that right by the Union. Furthermore, neither the Board nor the Government (party here) in any form was a participant in those negotiations. (Cf. the Act, Sec. 10(a).) Failure to incorporate a statutory right in a collective agreement does not mean that it has been waived. *Cloverleaf Division of Adams Dairy Co.*, 147 NLRB 1410, 1413-14 (1964); *New York Telephone Company*, 219 NLRB 679, 680 (1975); cf. *J. I. Case Company* v. *N.L.R.B.*, 253 F.2d 149, 153 (7th Cir. 1958). In light of the record presented, the Union may hardly be deemed to have waived a right which it has concededly consistently continued to assert. *Southwestern Bell Telephone Company*, 247 NLRB 171 (1980); cf. *Georgia Power Company*, 238 NLRB 572 (1978), enfd. 87 LC ¶ 11,593 (5th Cir. 1979); *Columbus Foundries, Inc.*, 229 NLRB 34 (1977), enforced 84 LC ¶ 10,645 (5th Cir. 1978); *New York Telephone Company, supra; New York Telephone Company*, 219 NLRB 685 (1975); *North Carolina Finishing Division of Fieldcrest Mills, Inc., supra.*

Contrary to Respondent's contention, it has not been established, by preponderating substantial evidence as required, that the Union has bargained away its right to the information in question. A bargaining representative's right to access to necessary bargaining information of the variety in question and the employer's correlative obligation to provide or make it available stem directly from the Act's command. The right and duty are not dependent upon, nor are they eliminated or whittled away by, agreement at any rate of the nature here presented. Cf. *N.L.R.B.* v. *Acme Industrial Co., supra.* The statutorily expressed fundamental public concern with maintenance of industrial peace is not subject to defeasance by private contractual arrangements. Cf. *Timken Roller Bearing Company, supra.* Indeed, as the General Counsel suggests in his brief, it may seriously be doubted that a bargaining representative can effectually waive, negate, relinquish, surrender, or emasculate its bargaining or fiduciary representational obligations under the Act—or curb employees' rights to access to bargaining information central to the collective-bargaining principle and to employees' protection of their interests in the terms and conditions of their employment—perhaps particularly since Congress saw fit to allow employees themselves, without intervention of the bargaining representative, to bargain directly with employers concerning grievances. The Act, Sec. 9(a); cf. *N.L.R.B.* v. *Magnavox Company of Tennessee*, 415 U.S. 322 (1974), rehearing denied 416 U.S. 952 (1974), reversing 474 F.2d 1269 (6th Cir. 1973), and affg. 195 NLRB 265 (1972); *The Kelly-Springfield Tire Company*, 223 NLRB 878, 881 (1976).

It is found that Respondent has failed to establish by substantial credible evidence, as required, that the Union's right of access to the information in question has been waived.[8]

[6] At the instant hearing, Respondent also took the position that it would refuse to permit the Union to conduct its own in-plant time counterstudies. In this position, Respondent is likewise clearly in error. See *N.L.R.B.* v. *Acme Industrial Co.*, 385 U.S. 432, 435-436, 438, fn. 8 (1967); *General Electric Company* v. *N.L.R.B., supra Alba-Waldensian, Inc.* v. *N.L.R.B.*, 404 F.2d 1370 (4th Cir. 1968), enfg. 167 NLRB 695 (1967); *Waycross Sportswear, Inc.* v. *N.L.R.B.*, 403 F. 2d 832, 835-836 (5th Cir. 1968); *Fafnir Bearing Company* v. *N.L.R.B.*, 362 F.2d 716, 720-722 (2d Cir.1966), quoted with approval in *N.L.R.B.* v. *Acme Industrial Co. supra* at 438, fn. 8; *The Timken Roller Bearing Company, supra; W. A. Sheaffer Pen Company supra; North Carolina Finishing Division of Fieldcrest Mills, Inc., supra;*

[7] Respondent's contention that other information, to which the Union is allegedly—again in Respondent's own opinion—not entitled, is also contained in the timestudy papers is peripheral to the issue. If, indeed—to be determined by the Board and not by Respondent itself—data of a confidential nature are contained in some of the material required to be produced, such a situation, if found by the Board to exist, may readily be handled through an appropriate protective order upon supplemental application to the Board. Since Respondent refused at the instant hearing to produce any of the material in question, even in defiance of a Board subpena, no basis has been shown at this point for such a protective order.

[8] Nor can "waiver" be extracted from the Union's abortive earlier assertion of some grievances, all of which were withdrawn without pro-

Continued

3. Third defense: The issue here has been resolved by prior arbitration determinations

Respondent contends that the issue here has been determined adversely to the Union in prior arbitrations.

While it is clear that previous arbitration determinations have neither "decided" the issue raised by this proceeding nor constitute "*res judicata*, nor are binding upon the Board—as conceded by Respondent's counsel—nor can oust the Board of its jurisdiction under the Act (cf. Act, Sec. 10(a), it is to be observed that in any event they do not appear to be inconsistent with the position here asserted by the General Counsel and the Union as to the Union's entitlement to access to the timestudy data in question.[9]

Furthermore, the mere fact that the Union (as well as Respondent) has been able in the past to achieve results acceptable to it through settlement or arbitration does not, of course, signify that it can or must do so now or in the future. It may simply be unwilling to settle for less than it is entitled to now or hereafter. And it is hornbook law that a party cannot be compelled to arbitrate in the absence of explicit, clear, written agreement or submission to do so. None is to be found here, either explicit or lurking in the contractual interstices; nor is there any indication that Respondent has sought to assert or enforce any such alleged binding obligation. Nor, even if there were such a provision, could it be effective to the extent of exempting the parties from their statutory obligations under the Act nor to oust the Board from its public responsibilities under the Act. (Cf. Act, Sec. 10(a) and *infra.*

It has not been established that the issue framed by the pleadings in the instant proceeding has been resolved in any prior arbitration or other proceeding, and it is so found.

4. Fourth defense: The Board must or should decline to exercise jurisdiction here, and must or should relegate the parties to arbitration

Respondent finally urges that the Board stand aside here and relegate the Union and the Employer to arbitration.

At the outset it is to be noted that arbitration of the issue here is neither required nor has it been completed, proceeded with, commenced, sought to be compelled, or even invoked. The situation is thus different from one where arbitration has already resulted in a determination, leaving its result and quality to be assessed by the Board under its *Spielberg*[10] standards.

By entering into the collective agreement here, the parties neither made nor could make a compact effectively to relieve themselves of the reciprocal obligation to bargain imposed upon them by the Act; nor did they[11] nor could they effectively agree to foreclose the Board from exercise of its statutory duty to oversee whether they or either of them complied with their statutory obligation to bargain in accordance with the Act's requirements. The parties are powerless to substitute themselves or an arbitrator to displace the Board and to determine instead of the Board whether either of them has violated the Act, that role being a public responsibility vested by Congress exclusively, in the first instance, in the Board. The Act, Section 10(a); *Edward J. White, Inc.*, 237 NLRB 1020 (1978); *Los Angeles Marine Hardware Co., etc.*, 235 NLRB 720 (1978), enfd. 602 F.2d 1302, 1308–09 (9th Cir. 1979); *Helvetia Sugar Cooperative, Inc.*, 234 NLRB 638 (1978); *National Rejectors Industries*, 234 NLRB 251 (1978). Particularly is this true when, as here, the dispute involves a question of law under the Act, rather than solely an issue of contract interpretation (*U.S. Postal Service*, 239 NLRB 97 (1978)), where the issue cannot be resolved through contract interpretation (*Meilman Food Industries, Inc.*, 234 NLRB 698 (1978), enfd. 85 LC ¶ 11,200 (D.C. Cir. 1979), where the complaint is based on alleged violation of the Act irrespective of contract interpretation (*Brewery Delivery Employees Local Union 46, IBT (Guinness-Harp Corporation)*, 236 NLRB 116 (1978)), or where issues of contract interpretation may be interrelated with issues involving interference with employees' Section 7 rights (*Los Angeles Marine Hardware, supra; National Rejectors Industries, supra*). There being no requirement to arbitrate the issue here, and the parties not having elected to proceed to arbitration, it is apparent that the filing of the unfair labor practice charge indicates that the Charging Party chose to place the matter before the Board as its preferred forum and that it was unwilling to submit the issue to arbitration (*Youngstown Sheet and Tube Company*, 235 NLRB 572, 575 (1978); cf. *Dubo Manufacturing Corporation*, 142 NLRB 431 (1963)); and, in any event, once the General Counsel issued the complaint based on that charge, the matter became *sub judice* for determination by the Board. The Board has specifically indicated that a

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ceeding to arbitration, in the face of Respondent's persisting refusal without justification to supply requested timestudy data the very issue here under consideration, "determination" of which Respondent attempted to preempt from the Board through its *ipse dixit* that the Union was not "entitled" thereto.

[9] Thus, in the 1949 (G.C. Exh. 3) and 1947 (Resp. Exh. 7) arbitrations relied on by Respondent, the umpire stated that "Paragraph 78 [of the 1948 collective agreement] makes no reference to time studies . . . . nor does it regulate them in any way when they are used . . . . 'The facts' to which the [Union] committeeman is entitled . . . are *all* the facts . . . . 'not only the overall standard . . . . but the broken down figures upon which that overall time was based' . . . . no such limitation [of breakdown of timestudy figures] may be derived from the language of the National Agreement . . . . Information which within reason *bears* upon the fairness of a standard is subject to disclosure under Paragraph 79, regardless of its weight as evidence or argument in ultimately fixing such standard . . . . [Management's] obligation under Paragraph 79 is fulfilled upon disclosure of all facts actually in its possession. In essence, the principle of Paragraph 79 in this respect is no different from the well known principle of responsible collective- baegaining on any subject. That is, that each party should fairly disclose all the facts in its possession and that neither participant should take advantage of the unawareness of the other" (Umpire Alexander, 1949; G.C. Exh. 3) and that concerning "the right of a Union Committeeman who was investigating a dispute over production standards under Paragraph 79 of the National Agreement to be furnished with Management's broken down time study of the job. . . . There should be no doubt about the answer. . . . Decision: Under Paragraph 79 of the National Agreement, a Union Committeeman investigating a dispute concerning a production standard is entitled to be furnished, upon request, not only with the overall time set for the job, but with the broken-down time study figures on which the overall time is based" (Umpire Seward, 1947; Resp. Exh. 7).

[10] *Spielberg Manufacturing Company*, 112 NLRB 1080 (1955).

[11] Neither par. 78 nor 79 of the parties' collective agreement requires arbitration of the issue here.

bargaining representative's right of access to relevant bargaining information is one of statutory entitlement, refusal of which constitutes violation of the Act—a matter for Board adjudication. See cases cited *supra; Garrett Railroad Car & Equipment, Inc.*, 244 NLRB 842 (1979); *Safeway Stores, Inc.*, 236 NLRB 1126 (1978), enfd. 622 F.2d 425 (9th Cir. 1980); *International Harvester Company*, 241 600 (1979); *W. A. Sheaffer Pen Company*, 214 NLRB 15, 23-24 (1974); *American Standard, Inc.*, 203 NLRB 1132 (1973).

While Respondent protests that, by asserting jurisdiction to determine the issue here presented, the Board is usurping the parties' rights to settle their differences through negotiation and resort to a private forum, Respondent chooses to ignore the facts that those differences have not been settled through negotiation, that Respondent has precluded rational discussion and negotiation by persisting in its refusal to disclose the alleged factual bases for the positions it continues to maintain, and that the parties have not resorted to any private forum. Respondent's contention in this aspect seems akin to that of the employer who, while insisting that it is financially unable to provide economic betterments for its employees, at the same time refuses to provide access to its books or supporting financial data.[12] Far from usurping jurisdiction or preventing the parties from conducting their own negotiations under these circumstances, such situations and inflexible positions are among the basic reasons the Act was enacted and the Board created to remedy, for meaningful good faith collective bargaining cannot be carried on in such contexts.

It is accordingly determined that Respondent has failed to demonstrate that the Board must or should decline to exercise jurisdiction here or that it is required to or should relegate the parties to that private arbitration which they themselves have eschewed.

Upon the foregoing findings and the entire record, I state the following:

CONCLUSIONS OF LAW

A. Jurisdiction is properly asserted in this proceeding.

B. Respondent's failure and refusal to provide the Union with the aforedescribed requested timestudies constitutes failure and refusal by Respondent to bargain collectively and in good faith with the Union as the duly designated representative of Respondent's employees in an appropriate bargaining unit, and Respondent has thereby engaged and is continuing to engage in unfair labor practices in violation of Section 8(a)(5) and (1) of the Act.

C. Said unfair labor practices have affected, are affecting, and unless permanently restrained and enjoined will continue to affect commerce within the meaning of Section 2(6) and (7) of the Act.

[12] That financial disclosures are required under such circumstances, see, e.g., *N.L.R.B.* v. *Truitt Manufacturing Co.*, 351 U.S. 149 (1956); *N.L.R.B.* v. *Bagel Bakers Council*, 434 F.2d 884 (2d Cir. 1970), cert. denied 402 U.S. 908 (1971); *United Steelworkers of America, AFL-CIO, Local 5571 [Stanley-Artex Windows]* v. *N.L.R.B.*, 401 F.2d 434 (D.C. Cir. 1968), cert. denied 395 U.S. 946 (1969); *International Telephone & Telegraph Corp.* v. *N.L.R.B.*, 382 F.2d 366 (3d Cir. 1967), cert. denied 389 U.S. 1039 (1968); and cf. *Metlox Manufacturing Company*, 153 NLRB 1388 (1965), enfd. 378 F.2d 728 (9th Cir. 1967), cert. denied 389 U.S. 1037 (1968).

REMEDY

Respondent should be required to cease and desist from continuing to violate the Act in the respects found or in like or related respects, and to take appropriate affirmative steps to remedy those violations, including the posting of the usual informative notice to employees. Respondent should be required either to provide copies of the timestudies in question to the Union or to provide the Union with access thereto for study, copying (by hand and/or by photo), and other proper utilization. If production and duplication of the required information involves substantial costs (which has not here been suggested), the parties may bargain over the allocation of those costs. *Westinghouse Electric Corporation*, 239 NLRB 106, 113 (1978).

Upon the basis of the foregoing findings of fact, conclusions of law, and the entire record, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:

ORDER[13]

The Respondent, General Motors Corporation, Delco Moraine Division, Dayton, Ohio, its officers, agents, successors, and assigns, shall:

A. Cease and desist from:

1. Refusing to bargain collectively in good faith with Local 696, United Automobile, Aerospace and Agricultural Implement Workers of America, by failing or refusing to furnish to that labor organization, at its request, relevant and necessary information for bargaining purposes and for responsibilities as bargaining representative of Respondent's employees in the appropriate unit; including all timestudies conducted and related data and information obtained, collected, derived, or utilized by Respondent to establish, announce, or propose any added, revised, altered, modified, or changed production standard in any department, branch, section, unit, operation, or work in or on which any employee in said unit is engaged or affecting his or her wages, hours, or any other term or condition of employment, inclusive of all timestudies used to establish a production standard of 8,960 units per 8-hour shift on the X-car Acme job in department 531 in July 1979 and all timestudies used to establish a production standard of 5,997 units per 8-hour shift on the Gilman Line in Department 529 in March 1980.

The appropriate bargaining unit is that set forth in the collective agreement now in force between Respondent and said Union.

2. Failing or refusing to bargain collectively in good faith with said Union, after supplying or making available to it, in the manner described in the Remedy portion of the Decision, said information which Respondent had been obliged heretofore to furnish.

[13] In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

3. In any like or related manner failing or refusing to bargain in good faith, or impeding or interfering with the efforts of its employees' said exclusive representative to bargain collectively on their behalf and to represent them properly in accordance with the requirements of the Act, or thereby interfering with, restraining, or coercing employees in the exercise of the rights guaranteed in Section 7 of the Act.

B. Take the following affirmative actions necessary to effectuate the policies of the Act:

1. Promptly supply or make available to Local 696, United Automobile, Aerospace and Agricultural Implement Workers of America, in the manner described in the remedy portion of the Decision, the timestudies and related material described *supra*, including:

(a) Timestudy worksheets, measurements, observation reports of individual operations in work process, precise standards of production, the original timestudy sheets, and other documents relative to both the prior production speed rates or standards and the new production speed rates or standards.

(b) All other data, studies, and other information used to determine the rate of production speed, performance standards, and pay for each such job.

(c) All documents, studies, and other information used to evaluate such jobs, including all information as to the factors, allowances, and tolerances used, and the weight given to each factor, allowance, and tolerance used to arrive at a final decision.

(d) Timestudy manuals, instructions, and procedures followed by Respondent's foremen, timestudy men, industrial engineers, and other employees and designees in making the detailed timestudies, evaluations, ratings, and production speed and performance standards and revisions or proposed revisions.[14]

2. Upon request, bargain collectively in good faith with the aforementioned Union with regard to the information so provided and matters touching the same, and upon request reduce to signed writing any understanding reached.

3. Post at its Needmore Road and at its Wisconsin Boulevard facilities in Dayton, Ohio, and at each other location if any wherein any employee in the aforedescribed bargaining unit is employed, copies of the attached notice marked "Appendix."[15] Copies of said notice, on forms provided by the Regional Director for Region 9, after being duly signed by Respondent's authorized representative, shall, be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

4. Furnish to said Regional Director signed copies of the notice in a quantity to be designated by the Regional Director, for posting by the aforementioned Union at said Union's locations, in the event so desired by the Union.

5. Notify the Regional Director for Region 9, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

WE WILL NOT fail or refuse to bargain collectively in good faith with your union, Local 696, United Automobile, Aerospace and Agricultural Implement Workers of America, by failing to comply with its request for original timestudies and information used by us to establish or change any production speed rate or standard on any operation, line, or job.

WE WILL NOT in any like or related manner fail or refuse to bargain with, impede, or interfere with the efforts of your Union to bargain collectively on your behalf or to represent you under the National Labor Relations Act; or thereby interfere with, restrain, or coerce you in the exercise of your rights guaranteed in Section 7 of the National Labor Relations Act.

WE WILL furnish or make available to your Union, at its request, all original timestudies and related data and information obtained or utilized by us in any connection with establishing or making any change in any production speed rate or standard on any operation, line, or job; and WE WILL bargain in good faith with your Union regarding that information and matters related to it.

WE WILL do the foregoing so as to enable your Union to bargain effectively with us on your behalf and so as to enable your Union to represent you properly concerning your production speed and output, pay, hours, and other terms and conditions of employment.

GENERAL MOTORS CORPORATION, DELCO MORAINE DIVISION

[14] Cf. *Timken Roller Bearing Company*, 138 NLRB 15 at 20-21 (1962), enfd. 325 F.2d 746 (6th Cir. 1963), cert. denied 376 U.S. 971 (1964).

[15] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."